



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

Overruler M. 830

April 2, 1973

Honorable Jim Wallace
Chairman, Intergovernmental
Relations Committee
Senate of the State of Texas
Austin, Texas

Letter Advisory No. 5

Re: Judicial retirement
rights under Senate
Bill 53

Dear Senator Wallace:

Senate Bill 53 of the 63rd Legislature, if enacted, will convert all domestic relations courts and juvenile courts into district courts of general jurisdiction and will enable the judges thereof, if elected to the newly created courts, to become participants in the Judicial Retirement System of Texas. Section 1.08(b) of the bill reads:

"Each judge, at his option, may pay into the State treasury 5 per cent of that salary that would have been paid to him had he been paid by the State for his full tenure on any court of domestic relations or special juvenile court. Upon such payment, the judge will be given full credit for such tenure toward State judicial retirement. "

You request that we assume (1) district judges cannot maintain their participation in any other county or state retirement system; (2) the judges are entitled to a full refund of their contributions made to any other system; and (3) each new district judge automatically will become a contributing member of the judicial retirement system. Without re-examining those assumptions, we rely on them in answering your questions.

You ask whether the Legislature may permit a "purchase of tenure" under the described circumstances and, specifically, whether the quoted provisions of Senate Bill 53 would be valid. We answer both of your questions in the affirmative.

Judicial retirement is provided by Article 5, § 1a of the Constitution of Texas, added in 1948:

"(1) Subject to the further provisions of this Section the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and Judges of District and Criminal District Courts on account of length of service, age or disability, and for their reassignment to active duty where and when needed"

The Legislature, in obedience to the constitutional mandate, has enacted appropriate legislation. Article 6228b, Vernon's Texas Civil Statutes (Acts, 1949, 51st Leg., p.181, as amended). The Act neither permits nor forbids the purchase of tenure in the judicial retirement system by new members with previous judicial experience. Section 6 does provide for re-purchase of tenure by those who, having dropped from the system, re-enter it at a later date.

Section 1a of Article 5 specifically requires the Legislature to "provide" for the retirement and compensation of certain judges. So long as the Legislature does not violate the purpose or intent of the Constitution, it is accorded wide discretion in determining the details of the judicial retirement plan and it may provide for a purchase of tenure by new members who previously have served in judicial positions. Government Service Ins. Underwriters v. Jones, 368 S. W. 2d 560 (Tex.1963).

We are not unmindful of the decision of the Supreme Court in Farrar v. Board of Trustees of Employees Retirement System of Texas, 150 Tex. 572, 243 S. W. 2d 688 (1951). The basic rationale of Farrar was that the Teacher Retirement System was designed to encourage teachers to remain teachers; the Employees Retirement System was designed to encourage employees to remain employees; and any blending of the two systems, as, for instance, allowing credit in one for credit in the other, would defeat the purpose of the retirement plans. The basis for the decision was rejected by the people of Texas through the adoption, in 1954, of § 63 of Article 16 of the Constitution, providing for the precise transfer of service credit that Farrar held was unavailable. Because of § 63, Farrar no longer states the law of Texas and Attorney General Opinion M-830(1971) based upon it, no longer reflects the opinion of this office. In any event, Senate Bill 53 calls for no transfer of credits between two systems.

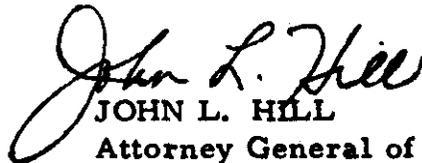
Senate Bill 53, to the contrary, should serve to encourage those who, as judges of domestic relations courts or juvenile courts have extensive experience in handling judicial matters, to seek election to the newly created district courts and thus make their experience available to the community. Were they denied the right to "purchase tenure", the incentive to remain "in service" might be far less.

No one has a vested right in the Texas Judicial Retirement System or in any other statutory retirement system in Texas. The rights of all participants are subject to the will of the Legislature, within constitutional limits. Therefore, valid complaint may not be made that to permit a purchase of tenure would dilute vested rights.

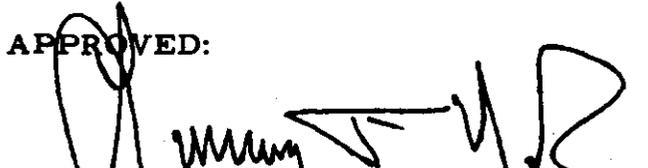
Our opinion is supported by the following authorities, among others: Article 5, § 1a of the Texas Constitution; Article 6228b, § 6 of Vernon's Texas Civil Statutes, City of Dallas v. Trammell, 101 S. W. 2d 1009 (Tex. 1937); Woods v. Reilly, 218 S. W. 2d 437, (Tex. 1949); Board of Managers of the Harris County Hospital District v. Pension Board of the Pension System for the City of Houston, 449 S. W. 2d 33 (Tex. 1970); Devon v. City of San Antonio, 443 S. W. 2d 598 (Tex. Civ. App., Waco, 1969, writ ref.); Attorney General Opinion M-941(1971).

We have limited ourselves to the precise facts you have assumed and the questions you have asked. We do not express any opinion as to whether purchase of tenure in the judicial retirement system would be available under other circumstances.

Very truly yours,


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APPROVED:


LARRY F. YORK, Executive Assistant


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Opinion Committee